

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)
_____)
)

THIS DOCUMENT RELATES TO:)

MDL No. 1456

Master File No. 01-12257-PBS

Subcategory Case No. 06-11337 -PBS

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Abbott Laboratories,)
Inc., Civil Action No. 06-11337-PBS;)

Hon. Patti B. Saris

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Dey, Inc., et al., Civil)
Action No. 05-11084-PBS; and)

Magistrate Judge Marianne B. Bowler

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Boehringer Ingelheim)
Corp., et al., Civil Action No. 07-10248-PBS)

United States ex rel Ven-A-Care of the Florida)
Keys, Inc. v. Schering Corporation, et al.,)
Civil Action No. 09-CV-10547)

United States ex rel Ven-A-Care of the Florida)
Keys, Inc. v. Schering Corporation, et al.,)
Civil Action No. 00-10698)

California ex rel. Ven-A-Care of the Florida)
Keys, Inc. v. Schering Corporation, et al.,)
Civil Action No. 03-CV-11226)

**OCTOBER 2009 STATUS REPORT OF THE UNITED STATES AND THE RELATOR
VEN-A-CARE OF THE FLORIDA KEYS**

The United States of America (“United States”) and Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care” or the “Relator”), Plaintiffs, through their undersigned counsel, respectfully file the attached Status Report for October 2009, in accordance with the Court’s June 17, 2004, Procedural Order.

**United States of America ex rel. Ven-a-Care of the Florida Keys, Inc., v.
Abbott Laboratories, Inc.
MDL Docket Number 06-11337
Original Jurisdiction: U. S. District Court Southern District of Florida**

Item No.	Pending Motions	Hearing Date
1.	<p>(Master Docket # 6096 and #6097 and Subcategory Docket #218 and #219) Motion for Sanctions and for a Finding of Spoliation and Memorandum of Law by Abbott Laboratories, Inc</p> <p>(Master Docket # 6270 and Subcategory Docket #281) United States Memorandum in Opposition re 6096 Abbott Lab's Motion for Sanctions and for a Finding of Spoliation and 6109 Dey's Motion for Sanctions and for a Finding of Spoliation</p> <p>(Master Docket #6271 and Subcategory Docket #282) Motion by the United States for Leave to Exceed Page Limits</p> <p>(Master Docket # 6157 and Subcategory Docket #225) Motion for Extension of Time to July 15, 2009 to Respond to Defense Motions for a Finding of Spoliation and for Sanctions by United States</p> <p>(Master Docket #6266 and Subcategory Docket #279) Unopposed Motion for Extension of Time to July 20, 2009 to Respond to Defense Motions for a Finding of Spoliation and for Sanctions by United States</p> <p>(Master Docket #6368 and 6369 and Subcategory Docket #360 and 361) Consent Motion for Leave to File a Reply Memorandum by Dey, Inc., Dey, L.P., Dey, L.P., Inc. and by Abbott Laboratories Inc. With Attached Reply</p>	

2.	<p>(Master Docket # 6175, #6177, #6188 and #6189 and Subcategory Docket #233, #235, #243 and #244) Motion in Limine To Exclude Certain Opinions Proffered by Plaintiffs' Expert Mark G. Duggan, Ph.D., Memorandum of Law, Statement of Material Facts and Affidavit by Abbott Laboratories, Inc.</p> <p>(Master Docket # 6176 and Subcategory Docket #224) Motion for Leave to File Oversized Brief in Support of Motion in Limine by Abbott Laboratories, Inc.</p>	
3.	<p>(Master Docket # 6179, #6183, #6187 (refiled as #6189) and #6216 and Subcategory Docket #250, #252 and #268) Motion to Dismiss for Lack of Jurisdiction Under the Public Disclosure Bar, Memorandum of Law and Statement of Material Facts by Abbott Laboratories, Inc.</p>	
4.	<p>(Master Docket #6185, #6186, #6187, #6188, #6189 and #6211 and Subcategory Docket #241, #242, #243, #244 and #262) Motion for Partial Summary Judgment, Declarations, Memorandum of Law and 56.1 Statement by Abbott Laboratories, Inc.</p> <p>(Master Docket #6302, #6305, #6308, #6312, #6314, #6318, #6319, #6320, #6322, and #6323 and Subcategory Docket #316, #317, #318, #321, #322, #323, #324, #325, #326 and #327) United States Cross- Motion for Summary Judgment, Memorandum of Law, Statement of Facts, Declaration with Exhibits and Response to Abbott's Motion and Response to Abbott's Statement of Facts</p> <p>(Master Docket #6310, #6316, #6317 and #6498 and Subcategory Docket #308, #312, #314 and #447) United States Memorandum of Law, 56.1 Statement of Facts, Amended Declaration with Exhibits 1 to 44 Common to All Defendants and Corrected Exhibit 24</p>	10/20/2009 at 2:00 PM

<p>4. Cont'd</p>	<p>(Master Docket #6415, #6440, #6448, #6455, #6456, #6464 and #6465 and Subcategory Docket #393, #416, #423, #424, #425) Abbott's Reply in Support of its Rule 56.1 Statement, Memorandum of Law in Opposition to US Motion and in Reply to US Opposition to its Motion, Rule 56.1 Statement of Additional Facts, Response to US Rule 56.1 Statement and Declaration with Additional Exhibits 1 to 140</p> <p>(Master Docket #6429, #6438, #6439, #6447, #6449, #6450, #6451, #6452, #6453, #6454 and #6459 and Subcategory Docket #409, #414 and #415)¹ Defendants Dey, Abbott and Roxane Common Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Rule 56.1 Statement of Additional Facts, Declaration with Additional Exhibits 1 to 215 and Declaration with Additional Exhibits 1 to 12</p> <p>(Master Docket #6524, #6526, #6529, #6530 and #6531 and Subcategory Docket #463, #465, #467, #469 and #470) United States Reply and Sur-Reply Memoranda, Sur-reply re Abbott's 56.1 Statement, Response to Abbott Additional 56.1 Statement, Reply re US 56.1 Statement and Declaration Submitting Exhibits 1 to 20.</p> <p>(Master Docket #6519, #6523, #6525/6527 and #6528 and Subcategory Docket #459, #462, #466 and #468) United States Reply and Sur-Reply Memoranda Common to All Defendants, Reply to Response to Common 56.1 Statement, Response to Defendants' Common Additional 56.1 Statement and Declaration attaching Exhibits 1 to 101</p>	<p>10/20/2009 at 2:00 PM</p>
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¹ Note: The following documents common to all three defendants have **not** been filed in the sub-category case: Master Docket Numbers 6447, 6449, 6450, 6451 6452, 6453, 6454, 6459, 6464, 6465, and 6476.

	<p align="center">United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey, Inc., et al., MDL Docket No. 05-11084-PBS Original Jurisdiction: United States District Court, District of Massachusetts</p>	
Item No.	Pending Motions	Hearing Date
1.	<p>(Master Docket #6109, #6110 and #6111 and Subcategory Docket #222, #223 and #224) Motion for Sanctions and for a Finding of Spoliation by Dey Inc., Memorandum of Law and Declaration</p> <p>(Master Docket # 6270 and Subcategory Docket #281) United States Memorandum in Opposition re 6096 Abbott Lab's Motion for Sanctions and for a Finding of Spoliation and 6109 Dey's Motion for Sanctions and for a Finding of Spoliation</p>	
2.	<p>(Master Docket #6170 and Subcategory Docket #230) Joint Motion To Establish a Briefing Schedule for Summary Judgment</p>	
3.	<p>(Master Docket #6174 and Subcategory Docket #232) Motion to Seal Document re: Unredacted Declaration of W. David Bradford, PH.D. and Supplemental Figures A-K to the Declaration of Lauren J. Stiroh in Support of Motion for Partial Summary Judgment by Dey</p>	

4.	<p>(Master Docket #6178, #6180, #6181, #6182, #6184, #6190, #6194 and #6204 and Subcategory Docket #236, #237, #238, #239, #240, #245, #249 and #264) Motion for Partial Summary Judgment, Affidavits, Declarations, Memorandum of Law and 56.1 Statement by Dey</p> <p>(Master Docket #6295, #6296, #6298, #6301, #6303, #6311 and #6331 and Subcategory Docket #301, #302, #303, #304, #305, #307, #312, #328, #329 and #336) United States Cross- Motion for Summary Judgment, Memorandum of Law, Statement of Facts, Declaration with Exhibits and Response to Motion and Response to Dey's Statement of Facts</p> <p>(Master Docket #6310, #6316, #6317 and #6498 and Subcategory Docket #308, #312, #314 and #447) United States Memorandum of Law, 56.1 Statement of Facts, Amended Declaration with Exhibits 1 to 44 Common to All Defendants and Corrected Exhibit 24</p> <p>(Master Docket #6426, #6428, #6430, #6432 and #6445 and Subcategory Docket #406, #408, #411, #412, and #422) Dey Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Reply in Support of its Rule 56.1 Statement of Facts, and Declaration with Additional Exhibits 297 to 418</p> <p>(Master Docket #6429, #6438, #6439, #6447, #6449, #6450, #6451, #6452, #6453, #6454 and #6459 and Subcategory Docket #409, #414 and #415) Defendants Dey, Abbott and Roxane <i>Common</i> Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Rule 56.1 Statement of Additional Facts, Declaration with Additional Exhibits 1 to 215 and Declaration with Additional Exhibits 1 to 12</p> <p>Master Docket #6513, #6520 and Subcategory Docket #453 and #460) Plaintiffs' Reply Memorandum, Reply to Dey's Response by United States of America Local Rule 56.1 Statement of Undisputed Facts</p>	10/20/2009 at 2:00 PM
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4. Cont'd	<p>(Master Docket #6524, #6526, #6529, #6530 and #6531 and Subcategory Docket #463, #465, #467, #469 and #470) United States Reply and Sur-Reply Memoranda, Sur-reply re Abbott's 56.1 Statement, Response to Abbott Additional 56.1 Statement, Reply re US 56.1 Statement and Declaration Submitting Exhibits 1 to 20.</p> <p>(Master Docket #6519, #6523, #6525/6527 and #6528 and Subcategory Docket #459, #462, #466 and #468) United States Reply and Sur-Reply Memoranda Common to All Defendants, Reply to Response to Common 56.1 Statement, Response to Defendants' Common Additional 56.1 Statement and Declaration attaching Exhibits 1 to 101</p>	
5.	<p>(Master Docket #6206, #6208 and #6209 and Subcategory Docket #265, #266 and #267) Motion to Dismiss the Relator's Complaints For Lack of Subject Matter Jurisdiction, Memorandum and Declaration</p>	
6.	<p>(Master Docket #6420 and Subcategory Docket #395) Partially Consented to Motion of Defendants Abbott, Dey and Roxane, Inc. for Leave to File Under Seal Certain Documents Containing Confidential Material by Dey, Inc.</p> <p>(Master Docket #6477 and Subcategory Docket #433) United States' Memorandum in Opposition</p> <p>(Master Docket #6500 and Subcategory Docket #448) United States' Amendment to Its Partial Opposition to Defendants' Motion for Leave to File Under Seal, and Assented to Motion to Substitute a Filed Exhibit with a Partially Redacted Exhibit and to File the Unredacted Exhibit Under Seal</p>	

	<p align="center">United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp., et al., MDL Docket No. 07-10248-PBS Original Jurisdiction: United States District Court, District of Massachusetts</p>	
Item No.	Pending Motions	Hearing Date
1.	<p>(Master Docket #6191, #6192, #6193, #6214 and #6215 and Subcategory Docket #246, #247, #248 and #263) Motion for Summary Judgment, Memorandum, Declaration and 56.1 Statement by Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc.</p> <p>(Master Docket #6410, #6411, #6412 and #6413 and Subcategory Docket #390, #391, #394 and #397) United States Memorandum in Opposition, Response to Statement of Facts and Affidavit in Support with Exhibits</p> <p>(Master Docket #6516, #6517 and #6522 and Subcategory Docket #456, #457 and #464) Reply Memorandum, Reply to the United States' Response to Boehringer Statement of Material Facts and Declaration Submitting Exhibits 89 to 130</p> <p>(Master Docket #6540 and Subcategory Docket #473) Unopposed Motion for Extension of Time to October 6, 2009 to File a Sur-Reply Memorandum by United States</p>	10/20/2009 at 2:00 PM
2.	<p>(Master Docket #6196, #6197 and #6198 and Subcategory Docket #253, #254 and #255) Motion to Dismiss for Lack of Jurisdiction Under the Public Disclosure Bar, Memorandum and Declaration by Roxane Laboratories, Inc, Boehringer Ingelheim Corp., Boehringer Ingelheim Roxane, Inc., Boehringer Ingelheim Pharmaceuticals, Inc.</p>	

3.	<p>(Master Docket #6199, #6200, #6201, #6202 and #6207 and Subcategory Docket #256, #257, #258, #260 and #261) Motion for Summary Judgment by Roxane Laboratories</p> <p>(Master Docket #6290, #6291, #6293, #6294, #6306, #6307, #6309, #6313, #6315, #6327 and #6334 and Subcategory Docket #297, #298, #299, #300, #309, #310, #311, #313, #315, #332 and #338) United States Cross-Motion for Summary Judgment, Memorandum of Law, Statement of Facts, Declaration with Exhibits and Response to Roxane's Motion and Response to Roxane's Statement of Facts</p> <p>(Master Docket #6310, #6316, #6317 and #6498 and Subcategory Docket #308, #312, #314 and #447) United States Memorandum of Law, 56.1 Statement of Facts, Amended Declaration with Exhibits 1 to 44 Common to All Defendants and Corrected Exhibit 24</p> <p>(Master Docket #6424, #6425, #6427, and #6431 and Subcategory Docket #404, #405, #407, and #410) Roxane Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Reply in Support of its Rule 56.1 Statement of Facts, and Declaration with Additional Exhibits 220 to 335)</p> <p>Master Docket #6429, #6438, #6439, #6447, #6449, #6450, #6451, #6452, #6453, #6454, #6459 and #6476 and Subcategory Docket #409, #414 and #415) Defendants Dey, Abbott and Roxane <i>Common</i> Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Rule 56.1 Statement of Additional Facts, Declaration with Additional Exhibits 1 to 215 and Declaration with Additional Exhibits 1 to 12, and Amended Declaration of David Torborg filed 9/2/09</p>	10/20/2009 at 2:00 PM
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<p>3. cont'd</p>	<p>(Master Docket #6514, #6515, #6518 and #6521 and Subcategory Docket #454, #455, #458 and #461) Reply and Surreply Memorandum, Cross Statement of Material Facts L.R. 56.1 re 297 Motion for Summary Judgment in Response to Additional Statement of Facts in Support of Roxane Defendants' Motion for Partial Summary Judgment (MD 6425 - ##298-318), Statement of Material Facts L.R. 56.1 re 297 MOTION for Summary Judgment in Reply to Roxane Defendants' Response to the L.R. 56.1 Statement of Material Facts and Supplemental Affidavit submitting Exhibits 182 to 190</p> <p>(Master Docket #6524, #6526, #6529, #6530 and #6531 and Subcategory Docket #463, #465, #467, #469 and #470) United States Reply and Sur-Reply Memoranda, Sur-reply re Abbott's 56.1 Statement, Response to Abbott Additional 56.1 Statement, Reply re US 56.1 Statement and Declaration Submitting Exhibits 1 to 20.</p> <p>(Master Docket #6519, #6523, #6525/6527 and #6528 and Subcategory Docket #459, #462, #466 and #468) United States Reply and Sur-Reply Memoranda <i>Common</i> to All Defendants, Reply to Response to Common 56.1 Statement, Response to Defendants' Combined Additional 56.1 Statement and Declaration attaching Exhibits 1 to 101</p>	
<p>4.</p>	<p>(Master Docket #6254, #6255 and #6256 and Subcategory Docket #274, #275 and #276) Motion for Sanctions and for a Finding of Spoliation by Roxane Laboratories, Inc, Boehringer Ingelheim Corp., Boehringer Ingelheim Roxane, Inc., Boehringer Ingelheim Pharmaceuticals, Inc.</p> <p>(Master Docket #6388 and #6389 and Subcategory Docket #370 and #371) United States Memorandum in Opposition to Motion for Sanctions and for a Finding of Spoliation and Supporting Affidavit</p>	

<p align="center"> United States of America ex rel. Ven-a-Care of the Florida Keys, Inc., v. Schering MDL Docket Number 06-11337 Civil Action No. 09-CV-10547 Civil Action No. 00-10698 Original Jurisdiction: U. S. District Court Southern District of Florida </p>		
Item No.	Pending Motions	Hearing Date
1.	<p>(Master Docket #6173 and Subcategory Docket #231) The Parties' Joint Motion for a Scheduling Conference by Schering-Plough Corporation, Schering Corporation, Warrick Pharmaceuticals Corporation and Ven-a-Care of the Florida Keys</p> <p>(Master Docket #6283 and Subcategory Docket #292) United States' Amended Objection to the Proposed Settlement Between Schering-Plough Corporation, Schering Corporation, Warrick Pharmaceuticals Corporation and Ven-a-Care of the Florida Keys, and Proposed Order</p> <p>(Master Docket #6285 and Subcategory Docket #293) Preliminary Response by Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation to the United States's Objection to the Proposed Settlement and Proposed Order</p>	<p>August 10, 2009 at 4:00 PM</p>
2.	<p>(Master Docket #6275 and #6276 and Subcategory Docket #288 and #289) Commonwealth of Massachusetts' Motion to Intervene for the Limited Purpose of Objecting to the Ven-a-care/Schering/warrick Settlement Agreement</p> <p>(Master Docket #6364 and Subcategory Docket 358) Joint Response to Motion to Intervene (6275/288)</p> <p>(Master Docket #6458 and Subcategory Docket #396) Corrected Reply Memo by Commonwealth of Massachusetts</p>	

3.	<p>(Master Docket #6288 and #6289 and Subcategory Docket [not filed]) The City of New York and New York Counties' Motion to Intervene For the Limited Purpose of Objecting to the Ven-a-Care/Schering/Warrick Proposed Settlement and Memorandum of Law</p>	
4.	<p>(Master Docket #6273 and Subcategory Docket #284) Motion to Amend by Ven-A-Care of the Florida Keys, Inc.</p> <p>(Master Docket #6286 and Subcategory Docket #294) Consent to Motion by Schering-Plough Corporation, Warrick Pharmaceuticals Corporation, Schering Corporation, Schering-Plough Corporation</p> <p>(Master Docket #6292 and Subcategory Docket #296) Consent Amended Complaint</p>	
5.	<p>(Master Docket #6359, #6360, #6361, #6362 and #6363 and Subcategory Docket #352, #354, #355, #356 and #357) Joint Motion and Memorandum for Settlement Approval Between California, Florida, and Relator Ven-A-Care of the Florida Keys on Behalf of Itself and the United States and Schering-Plough, Schering, and Warrick with Supporting Affidavits of Addanki, Trent and Jones</p> <p>(Master Docket #6457 and Subcategory Docket #377) Corrected Opposition filed by Commonwealth of Massachusetts</p> <p>(Master Docket #6414 and Subcategory Docket #392) Opposition filed by United States</p> <p>(Master Docket #6435 and #6436 and Subcategory Docket #[Not Filed]) Opposition filed by The City of New York and Captioned New York Counties and Supporting Declaration</p> <p>(Master Docket #6471 and Subcategory Docket #429) Joint Memorandum in Support re 354 Joint Motion for Settlement Approval filed by CA, Relator and Schering (Leave to File Granted on September 1, 2009)</p>	10/05/09 at 9:30 a.m.

<p>5. Cont'd</p>	<p>(Master Docket #6479 and Subcategory Docket #435) Reply filed by Ven-A-Care</p> <p>(Master Docket #6485 and # 6486 and Subcategory Docket #439 and #440) Reply filed by Schering and Supporting Affidavit</p> <p>(Master Docket #6501 and Subcategory Docket #450) Sur-Reply filed by United States</p> <p>(Master Docket #6502 and Subcategory Docket #[Not Filed]) Sur-Reply filed by the City of New York and Captioned New York Counties</p> <p>(Master Docket #6503 and Subcategory Docket #452) Sur-Reply filed by the Commonwealth of Massachusetts</p> <p>(Master Docket #6534 and Subcategory Docket #471) Reply filed by Schering</p>	
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Respectfully Submitted,

For the United States of America,

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October 1, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above "**OCTOBER 2009 STATUS REPORT OF THE UNITED STATES AND THE RELATOR VEN-A-CARE OF THE FLORIDA KEYS**" to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: October 1, 2009

/s/ James J. Fauci
Assistant U.S. Attorney